



PUBLIC NOTICE

Federal Communications Commission
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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON REQUEST FOR WAIVER BY THE COMMONWEALTH OF VIRGINIA TO OPERATE A WIDE AREA PUBLIC SAFETY RADIO SYSTEM UTILIZING PART 22 VHF FREQUENCIES

Comment Date: July 22, 2005

Reply Date: August 1, 2005

By this *Public Notice*, the Wireless Telecommunications Bureau seeks comment on a waiver request by the Commonwealth of Virginia, Department of State Police (the Commonwealth) to operate a wide area public safety radio communications system on unassigned Part 22 VHF frequencies. The Commonwealth contends that use of the subject channels is necessary due to the lack of available public safety channels. Specifically, the Commonwealth filed the waiver request and application, FCC File No. 0001924695 on November 4, 2004 to use frequencies designated for Part 22 one-way or two-way mobile operation to support the communications requirements of its public safety agencies. The Commonwealth seeks authorization to use VHF frequencies listed in Section 22.561 of the Commission's Rules, 47 C.F.R. § 22.561, at five locations in southwestern Virginia.

By way of background, the Commonwealth states that it operates a land mobile network with equipment that is in most cases almost thirty years old and that cannot accommodate its evolving and expanding public safety and homeland security operations. The current analog network utilizes forty-seven transmitter sites across the state on only four channels, where only one channel is available in any given area. As a result, the system is severely congested and unable to meet emergency communications requirements. Additionally, a majority of the Commonwealth's radio equipment has become obsolete and is no longer supported by manufacturers, resulting in a shortage of replacement components needed for repairs. Next, the Commonwealth's network will not accommodate the Commonwealth's expanding need for both voice and mobile data communications because the technology of the current system does not offer improved or innovative features and functionalities needed for efficient operations. Finally, the Commonwealth's radio network lacks interoperability capability with other agencies.

To address deficiencies in the current system, the Virginia General Assembly approved a plan to implement a digital, trunked land mobile system serving up to 7,500 users within twenty state agencies and facilitating interoperability with federal and local agencies. The Commonwealth plans to convert the existing network operated by the Virginia State Police, as it is comprised of 150 MHz land mobile equipment supported by a backbone microwave system. Many of the existing physical sites will be used for the new system. The new system will increase capacity, fill in coverage gaps, offer mobile data capabilities, and offer wide-area roaming capabilities.

The Commonwealth requests waivers of Sections 22.7, 20.9, and 22.565 of the Commission's Rules, 47 C.F.R. §§ 22.7, 20.9, and 22.565, and any other Commission rules that are necessary to grant its application, pursuant to Section 337(c) of the Communications Act of 1934, as amended (the Act), 47

U.S.C. § 337(c), and Sections 1.925 and 1.3 of the Commission's Rules, 47 C.F.R. § 1.925, 1.3. Section 22.7 of the Commission's Rules limits the eligibility for Part 22 authorizations to "common carriers." Section 20.9 specifies that Part 22 Paging and Radiotelephone operations shall be treated as commercial mobile radio services, which conflicts with the Commonwealth's proposed use of the channels for internal communications. Section 22.565 establishes the transmitting power limits for channels listed in Section 22.561. The Commonwealth notes that its proposed power levels are consistent with those permitted for VHF-band operations licensed under Part 90 rules.

The Commonwealth argues that a grant of its request would be consistent with Section 337(c) of the Act. Section 337(c) of the Act states that the Commission shall grant an application by an entity seeking to provide public safety services to the extent necessary to permit the use of unassigned frequencies, if the Commission makes five specific findings: (1) no other spectrum allocated for public safety use is immediately available; (2) there will be no harmful interference to other spectrum users entitled to protection; (3) public safety use of the frequencies is consistent with other public safety spectrum allocations in the geographic area in question; (4) the unassigned frequencies were allocated for their present use not less than two years prior to the grant of the application at issue; and (5) the grant of the application is consistent with the public interest. "Public safety services" are defined by 47 U.S.C. § 337(f) as services the sole or principal purpose of which is to protect the safety of life, health, or property, that are provided by the governmental entities or by non-governmental entities authorized by the governmental entity whose primary mission is the provision of such services, and that are not made commercially available to the public by the provider.

The Commonwealth asserts that the five requirements of Section 337(c) of the Act have been met: (1) a search for available spectrum indicates that the Part 22 VHF channels sought are the only viable option.¹ Certain isolated Part 90 frequencies remain available, but they are either subject to interference, are inappropriate to meet the Commonwealth's needs, or are needed by smaller local public safety providers in Virginia. (2) The proposed system will not cause harmful interference because there are no users or licensees on the Part 22 VHF channels in the proposed geographic area. The channels were made available in Auction No. 40 in 2001 and Auction No. 48 in 2003, but the Commission received no bids for these channels in Basic Economic Areas 45 and 47, where the Commonwealth seeks authorization. The Commonwealth searched the Commission's Universal Licensing System and determined that there are no incumbent licensees on the channels within seventy kilometers of the proposed sites. Therefore, the Commonwealth's operations will provide protection from harmful interference to co-channel and adjacent channel incumbent licensees. (3) The request is consistent with uses of the VHF band in the same general geographic area. The proposal will provide for interoperability with agencies within the Commonwealth. (4) The unassigned frequencies at issue were allocated for Part 22 mobile services over twenty years ago. (5) Granting the application and waiver request would be in the public interest as it will allow otherwise vacant spectrum to be used to support critical communications that promote the safety of life, health, property, and homeland security.

In the alternative to Section 337(c) of the Act, the Commonwealth states the Commission may grant a waiver pursuant to Sections 1.925 and 1.3 of the Commission's Rules, 47 C.F.R. § 1.925, 1.3. Section 1.925 provides that a waiver of the Commission's Rules may be granted if it is shown that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant

¹ The Commonwealth recently was authorized to use certain Part 80 VHF public coast station channels pursuant to an assignment and waiver, *see* Commonwealth of Virginia, *Order*, 19 FCC Rcd 15454 (WTB PSCID 2004), but the Commonwealth states that this spectrum is not sufficient to meet the needs of its proposed system.

case, and that a grant of the requested waiver would be in the public interest; or in view of the unique or unusual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest or if the applicant has no reasonable alternative. Section 1.3 provides that rule provisions may be “waived for good cause shown.”

Interested parties may file comments on the waiver request on or before July 22, 2005. Parties interested in submitting reply comments must do so on or before August 1, 2005. All comments should reference the subject waiver request including the DA number of this *Public Notice*, and should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only by the Commission's contractor, Natek, Inc., at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering 236 Massachusetts Avenue, N.E. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. See FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).

The application and waiver request can be accessed electronically via the Commission's Universal Licensing System, <http://wireless.fcc.gov/uls>. The full text of the waiver request, comments and reply comments will be available for inspection and duplication during regular business hours in the FCC Reference Information Center (RIC) of the Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. Copies also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554. Customers may contact BCPI through its web site, <http://www.bcpiweb.com>, by email at fcc@bcpiweb.com, by phone at (202) 488-5300 or (800) 378-3160, or by facsimile at (202) 488-5563. For further information regarding the public reference file for this waiver request, contact Maria Ringold, Chief, Wireless Branch, RIC, (202) 418-1355.

Unless otherwise provided, requests for waiver of the Commission's Rules are subject to treatment by the Commission as restricted proceedings for *ex parte* purposes under Section 1.1208 of the Commission's Rules, 47 C.F.R. § 1.1208. Because of the policy implications and potential impact of this proceeding on persons not parties to the waiver request, we believe it would be in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. See Sections 1.1200(a), 1.1206 of the Commission's Rules, 47 C.F.R. §§ 1.1200(a), 1.1206. Therefore, subsequent to the release of this *Public Notice*, *ex parte* presentations that are made with respect to the issues involved in the subject waiver request will be allowed but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b).

For further information, contact Mr. Tom Eng of the Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau at (202) 418-0019, TTY (202) 418-7233, or via e-mail to Thomas.Eng@fcc.gov.

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau.

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